

Economic Impact Statement

LSA Document #15-161

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

In May 2015, an Indiana backyard poultry flock tested positive for highly pathogenic avian influenza (HPAI). HPAI is a contagious and economically devastating disease that causes severe illness and/or death in poultry, such as chickens, turkeys, and ducks. The spread of this highly contagious disease in poultry has the potential to quickly destroy private property and cause economic hardship in the state's poultry industry.

Because the congregation of birds from multiple locations presents a significant risk of transmission of HPAI, the Indiana State Board of Animal Health (BOAH) immediately passed an emergency rule that established a temporary prohibition of events where birds from multiple sources are commingled, such as fairs, swap meets, and auction markets. The temporary prohibition served a critical purpose of protecting Indiana's bird population in the midst of the national outbreak and provided an opportunity for more research to occur regarding how this virus is being transmitted. It also provided an opportunity for the BOAH to evaluate permanent measures with stakeholders to mitigate the risk of birds becoming infected with HPAI.

This proposed rule is the outcome of the above-described evaluation. The primary purpose of the proposed rule is to enhance the traceability of poultry moving into and within Indiana. Animal traceability refers to the ability to document the history of an animal's movements in space and time. This information is critical in the presence of any disease outbreak that threatens food safety and animal and human health. Knowing where animals have been provides necessary information regarding their possible exposure to a disease or their exposure of other animals to the disease. Appropriate action can then be taken to contain the disease.

The rule requires a seller or owner and purchaser or recipient of poultry that are sold, bartered, or exchanged within Indiana to maintain a record of the transaction for three (3) years. Poultry sold directly to an approved slaughtering establishment or through an approved livestock facility are exempt from this requirement. It requires a livestock dealer or market facility to maintain certain records pertaining to the purchase, sale, or transfer of poultry for three (3) years. A dealer or market facility must keep as a part of their record any Certificates of Veterinary Inspection (CVIs) or alternate documentation required to move the poultry.

This proposed rule requires a person holding an exhibition of poultry to register the event with the board. A person holding an exhibition of poultry must maintain certain records associated with each participant in the event for two (2) years. If an animal is sold through an auction or other sale as a part of the exhibition, the person holding the event must record the name and address of the purchaser of each animal. The proposed rule also updates the incorporation by reference of the National Poultry Improvement Plan (NPIP) to the regulations in effect January 1, 2015.

1. Description of Affected Industry

According to the 2012 census conducted by the National Agricultural Statistics Service (NASS), Indiana has 6,445 poultry farms. This number includes both commercial and backyard flocks. Indiana has over 1,200 commercial poultry premises and over 6,000 backyard flocks voluntarily registered in the premises identification program. The BOAH currently has 64 livestock market facilities licensed with the agency. Because the BOAH does not currently require a person holding a poultry exhibition to register with the agency, it is unknown how many of these events are taking place annually across the state. However, it is known that at a minimum each county 4-H fair and the Indiana State Fair would be subject to the registration and record keeping requirements.

The BOAH has involved these regulated entities in the development of the rule. Prior to the first reading of the rule at the quarterly board meeting on July 9th, the agency sent out an e-mail correspondence to stakeholders making them aware of the proposed rule changes so they have the opportunity to provide input. The BOAH also created a "virtual public hearing" page where interested citizens can submit comments on the proposed rule. This page was created immediately upon the passage of the emergency rule in order to provide interested parties as much time as possible to provide input. The affected industry includes small businesses under the definition at [IC 4-22-2.1-4](#).

2. Estimated Annual Reporting, Record Keeping, and Other Administrative Costs

The proposed rule does include additional record keeping requirements for the above-described regulated entities. However, the BOAH does not anticipate that these requirements will result in significant administrative costs for these businesses. The proposed rule requires livestock market facilities to maintain certain records regarding the purchase and sale of poultry. As stated above, these facilities are already licensed and inspected by the board to ensure that they are maintaining these types of records for transactions involving livestock. The BOAH anticipates that many of these facilities are already maintaining the information required by the proposed rule for other business purposes. Alternatively, if they are not currently recording this information, these facilities already have a record keeping system in place where poultry transactions can be added to what is currently being

recorded for livestock at minimal administrative cost.

The rule also requires a person holding an exhibition of poultry to register the event with the board and maintain certain records. However, this change merely adds poultry to what is already required for livestock exhibitions. The majority of Indiana's exhibitions involve both livestock and poultry. Therefore, similar to the licensed markets, the organizers of these events already have a record keeping system in place to capture this type of information. Alternatively, if the exhibition is exclusive to poultry, it is likely that most of the participant information that is being required to be maintained is currently being kept for other purposes.

Finally, the rule adds a new requirement for a seller and purchaser of poultry that are sold, bartered, or exchanged within Indiana to maintain a record of the transaction. This requirement encompasses private treaty sales and sales in public venues such as fairs and shows, retail stores, and swap meets. With regard to private treaty sales, the BOAH has made a determination that an individual can maintain the essential information required in the rule regarding the transaction at minimal administrative cost. It is important to emphasize that an individual is not required to maintain these records if the sales of poultry are to an approved slaughter establishment or licensed livestock facility. The purpose of this exemption is to narrowly tailor the record keeping requirement for individuals by allowing them to benefit from the fact that slaughter and market facilities have an independent duty to maintain the essential traceability information.

With regard to sales in public venues, such as retail stores, most stores already have systems in place to capture buyer information that would satisfy the requirements of the proposed rule. Therefore, the board estimates the administrative expense to make adjustments to existing systems to capture this information to be minimal.

3. Estimated Total Annual Economic Impact on Small Businesses

The proposed rule does not increase compliance costs for regulated entities. BOAH does not assess a fee to register a poultry exhibition. All other requirements in the rule pertain to record keeping for private treaty sales and entities such as licensed markets and exhibitions. Although the BOAH can provide the number of licensed markets and estimate the number of exhibitions, based on available data it is not possible to estimate the number of private treaty sales of poultry that occur within the state on an annual basis. However, the proposed rule merely requires these individuals to maintain a minimal amount of information regarding the transaction, so the rule does not impose significant compliance costs on these individuals.

4. Justification of Requirements

a. Compliance with Federal Law

This proposed rule is necessary to implement a federal mandate. In order to comply with federal law, the BOAH must ensure that its interstate movement requirements for poultry align with federal standards. 9 CFR 86. Because participation in the NPIP is a component of federal interstate movement standards, it is critical that Indiana incorporate the most recent version of the NPIP regulations. If the BOAH does not incorporate by reference the most recent version of the NPIP, it may compromise Indiana poultry producers' opportunities to ship their products in interstate and international commerce.

b. Compliance with State Law

This proposed rule is necessary to comply with a state mandate. BOAH is responsible under state law to control the movement of animals, including the public and private sale of animals, and to ensure that an animal traceability system is in place to prevent, detect, control, and eradicate diseases affecting the health of animals. In order to carry out this duty, it is critical that the board periodically update its rules to ensure that animals can be effectively traced during a high consequence disease event.

c. Justification of Requirements not Mandated by State or Federal Law

The proposed rule does impose record keeping requirements beyond what is expressly required by state and federal law. However, if the BOAH does not proceed with this proposed rule, it will have negative consequences for the regulated community.

- If the agency does not implement a record keeping requirement for poultry, the state's ability to trace infected and exposed animals will be limited.
- Poor traceability lessens the BOAH's ability to effectively trace animals that may have been exposed to a disease of concern and/or may have exposed others. During a high consequence disease event, poor traceability will lead to outbreaks of longer duration, as diseased and exposed animals will not be rapidly found and quarantined, tested, treated, or euthanized.
- Inability to achieve rapid containment makes animal disease outbreaks more costly and an increased threat to animal and human health.

The proposed rule provides benefits to the state with regard to business competitiveness. As discussed above, without the record keeping requirements contained in this rule, the agency's ability to rapidly locate and quarantine diseased and exposed poultry is limited. The lack of traceability makes disease outbreaks more costly to our state's poultry industry due to more transmission of the virus and the state being subject to severe international trade restrictions for a longer period of time.

5. Regulatory Flexibility Analysis

The purpose of the proposed rule is to mitigate the risk of transmission of HPAI and other high consequence poultry diseases in Indiana's poultry population. However, in order to determine if there were any less intrusive or less costly alternative methods of achieving this purpose, BOAH considered the alternative of a HPAI testing requirement for poultry moving to events where they are commingled. This requirement might identify a HPAI positive bird prior to movement, which is different than the purpose of the traceability standards to aid in identifying infected and exposed animals after a positive animal has been identified. Although the HPAI testing requirement would provide this unique benefit, the BOAH made the determination that the imposition of the testing requirement would be unduly burdensome on the regulated community. The primary reason for this determination was that the HPAI test costs approximately \$40 per bird, which in most cases exceeds the value of the animal.

The BOAH also considered requiring individuals that buy, sell, or exhibit poultry to register in the BOAH Premises Identification program, which is currently a requirement for livestock. This program has been valuable to the livestock industry because it allows the BOAH to rapidly notify all animal owners in an area that may have been exposed to a high consequence animal disease, which provides for faster control of the disease. It is the BOAH's position that this program can provide similar value to Indiana poultry. However, at this time the BOAH has made a determination to continue its efforts to encourage poultry owners to register with the program on a voluntary basis.

After evaluating all of these alternatives, the BOAH made a determination that the establishment of a record keeping requirement for the purchase, sale, and exhibition of poultry in Indiana was the least costly and intrusive method of achieving the purpose of the proposed rule. The proposed rule enhances the traceability of poultry moving into and within Indiana, which is a critical component of mitigating the risk of disease transmission. Although the imposition of a HPAI testing requirement and mandatory premises registration would provide enhanced ability for the state to rapidly identify and contain a disease, it is the BOAH's position that the proposed rule strikes the appropriate balance between the protection of poultry health and minimizing regulatory burdens on private individuals and small businesses.

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